



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, 4 अगस्त, 1984/13 श्रावण, 1906

हिमाचल प्रदेश सरकार

ELECTION DEPARTMENT

NOTIFICATION

Shimla-171002, the 9th July, 1984

No. 3-10/84-ELN.—The Election Commission of India's notification No. 82/HP-LA/(8/82)/84, dated the 19th June, 1984 corresponding to 29th Jyaishta, 1906 (Saka) containing the judgement, dated the 9th December, 1983 of the High Court of Himachal Pradesh in Election Petition No. 8 of 1982, is hereby published for general information.

By order,
ATTAR SINGH,
Chief Electoral Officer,
Himachal Pradesh.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road,
New Delhi.

the 19th June, 1984.

Dated—
Jyaistha 29, 1906 (Saka)

NOTIFICATION

No. 82/HP-LA(8/82)/84.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment, dated the 9th December, 1983 of the High Court of Himachal Pradesh at Shimla, in Election Petition No. 8 of 1982.

भारत निर्वाचन आयोग

अशोक मार्ग, नई दिल्ली-110001.

19 जून, 1984.

तारीख:—

ज्येष्ठ 29, 1906 (शक्)

अधिसूचना

संख्या 82/हि० वि० स०/(8/82)/84.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1982 की निर्वाचन अर्जी सं० 8 में शिमला स्थित हिमाचल प्रदेश के उच्च न्यायालय के तारीख 9-12-83 का निर्णय एतद्वारा प्रकाशित करता है।

Copy of the judgment delivered on December 9, 1983, by the Hon'ble Mr. Justice H.S. Thakur, Acting Chief Justice in Election Petition No. 8 of 1982, titled.

Shri Kewal Singh son of Shri Kartar Singh resident of Village and P. O. Basa Waziran,
Tehsil Nurpur, District Kangra, (Himachal Pradesh) ..Petitioner.

Versus

Shri Sat Mahajan, Revenue Minister, Government of Himachal Pradesh 'Benmore' Shimla
..Respondent.

COPY OF JUDGMENT

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ELECTION PETITION NO. 8 OF 1982

DATE OF DECISION: DECEMBER 9, 1983

Kewal Singh

Petitioner.

Versus

Sat Mahajan

Respondent.

CORAM:

The Hon'ble Mr. Justice H.S. Thakur, A.C.J.
The Hon'ble Mr. Justice
The Hon'ble Mr. Justice

Whether approved for reporting? Yes

For the petitioner(s) Shri Chhabil Dass, Advocate.

For the Respondent(s) Sarvshri H. S. Doabia, Inder Singh, K. D. Sud and Devinder Gupta, Advocates.

H. S. THAKUR, ACTING C.J.

The petitioner has assailed the election of the respondent and has prayed that his election be declared to be void and that he be named and debarred or disqualified to contest the elections for a period of six years. The petitioner has further prayed that any other relief that may be deemed fit be also awarded and the costs of this petition be allowed to the petitioner.

The relevant facts may be stated. The petitioner was a contesting candidate at the election to the State Legislative Assembly of Himachal Pradesh held on May 19, 1982 for 34—Nurpur Assembly constituency. After referring to the schedule of the election programme, the petitioner has stated that besides the petitioner and the respondent, there were nine other contesting candidates. It is pointed out that the petitioner secured 12,085 votes whereas the respondent got 15,384 votes. It is not necessary to give the details of the votes secured by other candidates. The respondent was declared as a successful candidate in the election. The petitioner has assailed the election of the respondent mainly on the ground that the respondent committed the corrupt practice of bribery as defined under sub-section (1) (a) and (b) of section 123 of the Representation of People Act. In the election petition, the instances of the corrupt practices have also been given.

On the pleadings of the parties, the following issues were framed :

- (1) Whether the petition lacks material facts and full particulars ? If so, its effect? OPR
- (2) Whether the affidavit attached to the petition is not in conformity with law? If so, its effect? OPR
- (3) Whether the petition has not been verified in accordance with law? If so, its effect? OPR.
- (4) Whether the allegations contained in paras 4(a) to 4(n) of the Election petition constitute corrupt practice as defined in section 123 of the Representation of People Act, 1951? OPR.
- (5) Whether the petitioner has not complied with the provisions of law and the rules as required under the Representation of People Act and the rules thereof? If so, its effect? OPR
- (6) Whether the respondent committed the corrupt practice of bribery by distributing discretionary grant through B.D.O. Nurpur as alleged in paras 4(i)(a) of the petition? OPP.
- (7) Whether the respondent committed the corrupt practice of bribery by distributing old age pension to the persons mentioned in para 4(b) of the petition ? OPP
- (8) Whether the respondent committed the corrupt practice by promising to procure old age pension to the persons mentioned in para 4(c) of the petition ?OPP
- (9) Whether the respondent committed the corrupt practice by promising to get 100 boys of village Danni employed in the Chamara Project as alleged in para 4(d) of the petition? OPP.
- (10) Whether the respondent committed the corrupt practice of bribery by distributing 'pattas' to the persons mentioned in para 4(e) of the petition in the manner alleged?OPP
- (11) Whether the respondent committed the corrupt practice of bribery of seeking the help of gazetted officers of Medical Department in starting the three dispensaries as alleged in para 4(f) of the petition? OPP
- (12) Whether the respondent committed the corrupt practice of bribery by opening five 'Bal Baris' as alleged in para 4(g) of the petition? OPP
- (13) Whether the respondent committed the corrupt practice of bribery by seeking the assistance of gazetted officers by getting opened the schools at the places mentioned in para 4(h) of the petition ? OPP
- (14) Whether the respondent committed the corrupt practice of bribery by getting installed tap connections as mentioned in para 4(j) and (k) of the petition? OPP

- (15) Whether the respondent committed the corrupt practice of bribery by obtaining and procuring the assistance from persons in service of the Government and belonging to prohibited class and used official car No. HPS—3503 during the elections, as alleged in para 4(m) of the petition. OPP
- (16) Whether the respondent committed the corrupt practice of bribery by getting distributed the amount of aid to poor students as alleged in para 4(n) of the petition? OPP
- (17) Relief.

After the issues were framed, it was contended by Shri H.S. Doabia, learned counsel for the respondent, that before the evidence is recorded, he would like to address the court on preliminary objections. According to him, issues 1 to 5 were to be treated as Preliminary issues. The learned counsel for the parties addressed arguments on the above preliminary issues. The arguments were heard for some days. They agreed to submit detailed written arguments also. The learned counsel for the respondent submitted the written arguments on March 30, 1983 but the learned counsel for the petitioner kept on taking time to file written arguments on behalf of the petitioner. It was ultimately on June 8, 1983 that written arguments were filed on behalf of the petitioner.

The main contention of the learned counsel for the respondent is that the petition lacked material facts and particulars and on that account, the election petition deserved to be dismissed. In order to appreciate the arguments of the learned counsel for the parties, it is desirable to reproduce the particulars as given in the election petition for a ready reference:

“4 (a)

- (i) That respondent became a Minister-in-charge of the Department of Revenue, Tourism and Elections in the year, 1980 in the Ministry formed by the Congress (I) headed by Shri Ram Lal, Chief Minister. The respondent continued and was holding the post of Minister-in-charge of the aforesaid portfolio even during the time of election.
- (ii) That the respondent being the Minister-in-charge allowed certain amount known as Discretionary Grant at his disposal to be distributed in his absolute discretion to various people, institutions etc. throughout the Pradesh. An amount of about Rs. 50,000 is allowed to every Minister during a financial year. For the financial year, 1981-82 the aforesaid amount was made available to the respondent for distributing throughout the Pradesh during the whole year, however, the respondent started distributing the money of Discretionary Grants at his disposal after announcement of the election schedule and he spent Rs. 45,000 out of the total amount of Rs. 50,000 between 19th April, 1982 to 12th May, 1982 and almost totally exhausted his Discretionary Amount in his own constituency as a gratification reward with an object, directly, or indirectly, of inducing the elections in his constituency to vote for him or refrain from voting for his rivals. As an inducement or a motive or a reward for the electors of his constituency to vote for the respondent and refrain from voting for his rivals, the aforesaid Discretionary Grants were distributed through the Block Development Officer, Nurgar to the following schools on the dates given below: —

Date	Name	Amount
		Rs.
19-4-1982	Ther School	...
-do-	Chhattar School	10,000
-do-	Balghar at Talara	10,000
3-5-1982	Baratgarh at Talara	5,000
-do-	Government Primary School Sukhar.	3,000
-do-	Government Primary School Mamoon Gurchal	2,500
12-5-1982	Government Primary School, Ahanni	5,000

It may be submitted that the aforesaid grants were mostly made through the Block Development Officer to the various panchayats on their asking and behest as a reward and a promise to vote for the respondent.

(b)(i) That the Himachal Pradesh Government has sanctioned a scheme for payment of pensions to various persons who are old and are of more than 60 years of age and are incapable of earning their livelihood. The aforesaid persons are entitled to get old age pensions under the scheme. The respondent got this old age pension distributed to the following persons:

1.
(Nineteen persons)

The amounts of pensions are given in monthly instalments and so long as a person is alive and as such there is no question of getting the pensions distributed in lump sum. The respondent by exercising his own influence as a Minister got the pensions accumulated and manipulated in such a manner that the aforesaid pensions were sent through post office in the first week of April but were only distributed to various persons on a day when the respondent was personally present in those villages on those days, thus inducing the persons who received those pensions that as if the pensions were bounty given by the respondent personally as in inducement or reward for such persons to vote for respondent or refrain from voting for his rivals.

(c) That apart from the above persons to whom pensions were got distributed, the respondent asked the following persons to vote for him and went personally to their houses on different dates during the elections and told them that he will procure old age pensions for them also as a reward or inducement to vote for him. The names of the persons are given below:—

- (1) Pt. Mulak Raj son of Shri Shiv Dayal, resident of village Baloon, P.O. Jassore, Tehsil Nurpur.
- (2) Shri Munshi Ram son of Shri Mehtu Ram, resident of village Telan, P.O. Kukher.
- (3) Shri Punnu Ram son of Shri Batolu, resident of village Thera Baloon.
- (4) Shri Bikram Singh son of Shri Bhikham Singh, resident of village Ratil.

(d) That on 14th May, 1982, the respondent visited village Thera and village Dhanni, addressed meetings and told them that if they voted for him, he will get at least 100 boys from their villages, jobs in the Chamera Project through Shri Vikram Mahajan, Minister of State for Energy in the Central Government.

(e) That in Himachal Pradesh, there is a scheme to allot land to landless people up to 10 kanals 11 marlas i.e. about one standard acre. The aforesaid distribution of land is done by the Revenue Department of which the respondent is the Minister-in-charge. A landless person has been defined under sub-section (c) of section 2 of the Himachal Pradesh Village Common Lands Vesting and Utilisation Act, 1974 as under:

“(c) ‘Landless person’ means a person who holding no land for agricultural purposes, whether as an owner or a tenant, earns his livelihood principally by manual labour on land and intends to take the profession of agriculture and is capable of cultivating the land personally.”.

The land is allotted to such persons to the extent of one standard acre then the deficiency is made up by allotting the balance land. The respondent as an inducement and in strict violations of the rules and law, distributed ‘Pattas’ in respect of the lands to the following persons in the village mentioned against them during the election. It may be submitted that these lands were given as an inducement of reward or gratification to various persons to vote for the respondent and not to vote for his rivals. The ‘Pattas’ were distributed personally by the respondent in various villages during this election tour i.e. between 24th of April, 1982 to 18th of May, 1982. The details are

given below. The 'Pattas' were distributed in villages Bhaleta and Kathal in Gram Panchayat Rampala:

1.
(Twelve persons)

It may be submitted that all the above noted persons were not entitled to the grant of land in as much as they are members of joint families and are owners of lands although the name of their father have been recorded in the revenue records as owning the lands. The above noted persons if claim partition of their ancestral lands would entitled to more than the prescribed limits but this irregularity and illegality was committed simply as an inducement and as a reward to the aforesaid persons to vote for the respondent in the election by illegal exercise of power and also by not getting the sanctions made by proper inquiry as envisaged under the provisions of law.

(f) That the respondent took illegal help of gazetted officers i.e. the gazetted officers of Medical Department in starting three dispensaries in his constituency during the elections and also as an inducement or gratification to his constituents to vote for him not only by misuse of power but also by opening of those dispensaries in flagrant violation of the rules and in the manner hereinafter mentioned. The following dispensaries were opened:

1. Medical Dispensary at Halli, Jamwalan.
2. Medical Dispensary at Aundi.
3. Medical Dispensary at Sukhar.

It may be submitted that the Government sanctions existed only for Hatli Jamwalan whereas there was no sanction for Aundi and Sukhar. The dispensary at Subhar was closed immediately after the poll. The above two dispensaries at Aundi and Sukhar had no sanction of the Government but were opened during the elections only to induce the voters to vote for him. Thus, the respondent not only committed the corrupt practice, of bribery by giving gratification to induce but also is guilty of taking assistance of Government servants of prohibited class which assistance was reasonably calculated to further the election prospects of the respondent.

(g) That between 26th April, 1982 to 18th May, 1982, the respondent toured his constituency extensively and announced the opening of 'Balbaris' under the Scheme sanctioned by the Government of India. However, the respondent opened 5 'Balbaris' in the following villages:

1. Ssdqan,
2. Sukhar,
3. Thora Baloon,
5. Kher, and
5. Sulyali.

The aforesaid 'Balbaris' started functioning during the election without there being a proper sanction of the Government of India and it appears that the respondent started the 'Balbaris' at his own expense. The aforesaid 2 'balbaris' at Sadwan and Sukhar are still working whereas other three 'Balbaris' have stopped working after the poll. Thus the respondent gave inducement to Various constituents to support his candidature by opening fake 'Balbaris' and is guilty of corrupt practice of bribery.

(h) That the respondent is also guilty of bribery and taking the assistance of gazetted officers of prohibited class in furtherance of prospects of his election inasmuch as:

There were 6 schools sanctioned, 4 of them Primary Schools i.e. in villages Minanta Chamral, Aundi, Ghaloon, Badhul and 2 Middle Schools namely in villages Minjhgram and Chhattar. The sanction was given on 28th February, 1982 and the schools should have started functioning in the month of March when the sessions of school were to start, the respondent by exercising

his influence got the opening of those schools postponed to the period of election and these schools were only opened between 26 th April, 1982 to 18th May, 1982, At the same time there was a demand for opening of one school in village Galore but the Government had not sanctioned the school. However, in order to induce the constituents, the respondent with the connivance of the Local District Education Officer got classes started in that village without there being any proper sanction of the authorities. The classes have been started and the teacher has been deputed from village Thora Baloon School to village Galore to teach the students. Even the attendance of the students is shown to have been marked in the school of Thora Baloon although the school is being run in village Galore.

(j) That there is an old scheme of water supply in the area of Nurpur known as Dehri Water Supply Scheme. The aforesaid Scheme caters drinking water supply to various villages and for the last more than 2½ years, the said water supply scheme is working to full capacity and cannot take any further load and as such for the last 2½ years, on the advice of the Engineers further taps are not being allowed to any person and hundreds of applications for the supply of water from that scheme have been rejected or kept pending. The respondent during the elections persuaded the authorities concerned to get as many as 54 connections to various individuals during the elections between 24th April, 1982 to 18th May, 1982 although the further allotment of the taps was closed. This was again an act of bribery and also taking the assistance of Government Officers of prohibited class in furtherance of his election at an inducement for the voters to vote for the respondent. The details of the aforesaid water taps are given below.

“1.....
(55 taps in 25 villages)

It may be submitted that the aforesaid taps were not sanctioned legally but whenever the respondent went to various villages and people were gathered for election meetings or for canvassing, any person who rose in the meeting and asked for a tap connection, get the tap connection under the orders of the respondent as the irrigation staff also used to accompany him and these taps were installed either on the same evening or a few days later. It may further be submitted that the aforesaid taps were installed in such a post haste manner to win over the voters that regular pipes were not laid but only alkathene pipes were laid with the result that many of the pipes have gone dry after the election and 2 or 3 of the taps have now been dismantled.

(k) Similarly water taps were granted to the following villages out of other water supply schemes namely Talara, Thora, Baloon, Sulyali, Dadar Phase-I and Ladore Phase-II Water Supply Schemes. There also the applications for supply of water taps were not processed according to law rules but the connections were granted during the course of elections in meetings submitted above. The details of the aforesaid taps from the above 5 water supply schemes are given below:—

1.....
(36 taps in 5 Water Supply Schemes)

(m) That the respondent is also guilty of obtaining and procuring assistance for the furtherance of the prospect of his elections from persons in the service of Government and belonging to the prohibited class i.e. Managing Director of Tourism and his subordinate officers who are Gazetted Officers of the Government of Himachal Pradesh in the Tourism Corporation of which respondent is the Chairman being the Minister-in-charge tourism:

He in furtherance of his election used the Official car No HPS- 3503 which went on duty between 24th of April, 1982 to 16th of May, 1982 in the constituency of the respondent who utilised the services of the car and also toured in that car but this car was used with his consent by his various workers, voters and canvassers. The aforesaid car was not even shown to have been used by him in his election expenses.

(n) That the respondent is also guilty of corrupt practice of bribery inasmuch as in the various election meetings addressed by him, many constituents told the respondent that the aid to poor students was not being released by the Government and many arrears had accumulated for the purpose and as a bargain, the people threatened not to vote for the respondent if the aforesaid release of scholarships/stipends is not made. Immediately the respondent contacted the District Education Officer, Dharamshala who deputed two persons to distribute the aforesaid stipends personally to the students so much so that between 12th of May, 1982 to 17th May 1982, the stipends were distributed not only in the schools but personally to the students at their houses. The schools in which the stipends were distributed were almost all the Middle and High Schools of the constituency and the following other school:

1. Ganon Hingh School.
2. Sadwan Middle School.
3. Sulyali High School.
4. Rehan Higher Secondary School.

The respondent has committed the corrupt practice of bribery and also of taking the assistance of Government Officials in furtherance of his election."

The respondent in his reply to the election petition has taken preliminary objections. The allegations of the petitioner have been denied and it is contended that the necessary particulars as required under the law have not been furnished in the election petition. It is specifically pointed out that the allegations are vague and the dates, places and the manner of committing the alleged corrupt practices have not been given. It is not necessary to reproduce the contents of the reply. However it is desirable to refer to the same as and when deemed necessary. The petitioner has also filed replication and has specifically controverted the allegations of the respondent that any of the instances, mentioned in preliminary objections, lacked in material particulars. In substance, he has reiterated the contents of the election petition.

The respondent has referred to section 83 (1)(a) of the Representation of People Act, 1951. It is contended that an election petition shall set forth full particulars of any corrupt practices that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices and the date and place of the commission of each such practice. It is pointed out that there is a distinction between material facts and material particulars. He has referred to the decision in *Samant N. Balkrishana Vs. George Fernandez and others* (AIR 1969 SC 1201). It is contended that when material facts are not stated, there is no cause of action and that the compliance with section 83 of the Representation of People Act (hereinafter referred to as 'The Act') is a condition precedent. It is further pointed out that the view taken by their Lordships of the Supreme Court in *N. Balkrishanas' case* (Supra) has been followed in *Raj Narain Vs. Smt. Indira Nehru Gandhi and another*. (AIR 1972 SC 1302) and *Hardwari Lal Vs. Kanwal Singh*. (AIR 1972 SC 515). It is emphasised by the learned counsel for the respondent that the test for maintaining an election petition is that even if the respondent does not appear to defend the petition, can the court give a verdict in favour of the election petitioner or not? As such, the Ultimate question to be decided is whether the allegations in the election petition disclose any cause of action? He has drawn my attention to Section 123 of the Act. The learned counsel has also referred to a decision in *Mohan Singh vs. Bhanwar Lal and others*. (AIR 1964 SC 1366). On the basis of this decision, it is contended that mere offer by a successful candidate to help another candidate in securing job and asking him to withdraw, is not an allegation of corrupt practice. It is asserted that what is required is an express averment in the election petition about the fact of acceptance of offer and that unless such an express averment regarding bargain is made, there is no allegation of corrupt practice. It is also pointed out that mere delivery of cheques regarding grants cannot also possibly amount to bribery when there is no element of bargain in regard to it.

It is further contended that there has to be positive averement that the elected candidate obtained the promises from the voters in return, as a condition for help. According to the learned counsel, in the absence of allegation of bargaining, there is no cause of action. In support of his contention, the learned counsel has referred to the decisions in *Harijt Singh Mann vs. Umrao Singh and others*, (AIR 1980 SC cases 713), *Ghasi Ram vs. Dal Singh and others* (AIR 1968 SC 1191), *Bhanu Kumar Shastri vs. Mohan Lal Sukhadia and others* (AIR 1971 SC 2025) *Randhir Singh vs. Rani Inder Singh* (AIR 1981 Punjab & Haryana 45) and an unreported judgment in Election petition No. 5 of 1982 (*Priya Vart vs. Mango Ram*) decided on 10-12-1982 by Punjab & Haryana High Court.

While refuting the allegations that the respondent used certain discretionary funds in furtherance of his election prospects, got released old age pension, awarded stipends to the students, installed taps, got opened schools, dispensaries, 'Balbaris' and distributed 'Pattas' and while explaining the position of Minister and the work done by him during the election, the learned counsel has referred to the decisions of the Supreme Court. *Ghasi Ram vs. Dal Singh*, (AIR 1968 SC 1191), *Mrs. Om Prabha Jain vs. Abnash Chand & another* (AIR 1968 SC 1083) and *Bhanu Kumar Shastri vs. Mohanlal Sukhadia and others* (AIR 1971 SC 2025). On the basis of these decisions, it contended that public utility works, redressing grievances of the public and ordinary amelioration of grievances of the public do not constitute a corrupt practice. As such, it is asserted that the allegations against the respondent are nothing but of general character. It is further emphasised that there is not even an iota of evidence or a single assertion that there was an element of bargain. According to the learned counsel for the respondent, it is not alleged in the petition that particular persons were approached who were given any promise or offered any gratification. It is ultimately contended that various allegation made in the election petition lack material facts.

Mr. Chhabil Dass, learned counsel for the petitioner, has emphatically controverted the contentions raised on behalf of the respondent. It is pointed out by him that the main question for decision is whether the petitioner shows a complete cause of action or not. According to him, there is a vast difference between absence of material particulars and material facts constituting the corrupt practice. In case the material facts are wanting, of course, there is no complete cause of action. But if there is a lack of particulars, the court can always ask for the same. He has referred to a decision in *Beli Ram vs. J. B. L. Khachi*, (ILR 1972 HP 264). On the basis of this decision, it is contended that the petition cannot be dismissed for want of material particulars and that those can be called for. The learned counsel has further contended that it is absolutely wrong that simple act of benevolence or distribution of discretionary grants will not amount to the act bribery unless some type of bargain is shown. He has tried to show that the impact of the decision in *Ghasi Ram vs. Dal Singh*, (AIR 1968 SC 1191) has not been properly construed by the learned counsel for the respondent. It is pointed out that their Lordship of the Supreme Court in that case has specifically pointed out that if there was good evidence that the Minister organised directly or indirectly for votes, the result might have been different but there was no such evidence. While dealing with the decision in *Om Prabha's* (supra), (AIR 1968 SC 1083) he has referred to paragraph 12 of the judgment. The said paragraph may be reproduced for a ready reference:

"This brings us to the question whether the circumstances of this case clearly demonstrated that there must have been some kind of bargain before the grant was made and that this bargain was with a view to inducing the voters to support the candidature of the appellant. In *Ghasi Ram v. Dal Singh*, Civil writ No. 1632 of 1967, D/-7-2-1967 (SC), in which the judgment of this Court was pronounced today, the law relating to corrupt practice specially in the matter of giving of discretionary grants has been considered and stated. It has been pointed out that a Minister in the discharge of his duties may be required to do some acts of administration including the granting of money for the uplift of certain communities and this action of the Minister is not to be construed against him unless it can be established that there was a bargain with the voters for getting their assistance at the election. Since the oral evidence in this case is non-existing we must now look at the circumstances whether this conclusion which has been drawn by the High Court can be irresistibly reached."

Similarly, the learned counsel has tried to explain the impact of the decision in Mohan Lal's case (Supra) (AIR 1971 SC 2025). He has referred to paragraph 58 of the said judgment. The relevant portion of the same may be reproduced :

“... It was said on behalf of the respondent that if Ministers on the eve of the election render public or social service by redressing grievances of the public in relation to construction of roads or installation of water taps or closing of insanitary drains or pits, these acts should not be interpreted to be either gift or offer or promise or gratification. It is difficult to lay down an abstract proposition. Ordinarily amelioration of grievances of the public appears to be innocuous. If, however, there is evidence to indicate that any candidate at an election abuses his power and position as a Minister in the Government by utilising public revenues for conferment advantage or benefit on a particular group of people for the purpose of obtaining their votes, different considerations will arise. The Court is always vigilant to watch not only the conduct of the candidates and to protect their character from being defamed but also to see that the character and conduct of the public is not corroded by corrupt motive or evil purposes of candidates. The genuine and *bona fide* aims and aspirations of candidates have to be protected on the one hand and *mala fide* abuse and arrogance of power will have to be censured on other.”

In this judgment, however, it is further observed that it has to be found out as to whether the respondent did any act, which can be construed to be out of the ordinary or with a view to entering into an election bargain with the voters.

The learned counsel for the petitioner has contended that it is not necessary that there should be an acceptance of offer of bribe and that offer to bribe as a bargain is sufficient and acceptance is not necessary. He has referred to the decision in *Mohan Singh Laxmansingh vs. Bhanwarilal Rajmal Nahata and others*, (AIR 1964 MP 137). It is further pointed out that similar view has been taken by their Lordships of the Supreme Court in *Mangallal Bagdi v. Hari Vishnu Kamath*, (1958 Election Law Reports 205 Vol. 15). In Mohansingh's case (supra), it has been observed that it is necessary that any gratification even if offered by a candidate is not enough but it is essential that the person also agrees to receive the gratification in terms of the offer.

I have considered the respective contentions of the learned counsel for the parties. As pointed out earlier above, the main contention of the respondent is that the petition lacks in material facts and particulars in respect of the alleged acts of corruption. It is further contended that the allegations are vague and the dates, places and the manner of committing the alleged corrupt practices have not been given. It is also emphasised that the test for maintaining an election petition is that even if the respondent does not appear to defend the petition, can a verdict in favour of the election petitioner be given and whether the allegations in the election petition disclose any cause of action? It is also asserted that in order to prove the corrupt practices of illegal gratification, it is necessary that there should be a bargain and the offer of gratification is accepted.

The record shows that the election petitioner even in his replication asserted that material facts and full particulars had been given in the election petition. He did not make any request for giving him time to furnish material facts and particulars. As such, the contention of the petitioner that court can always ask for particulars does not arise and the decision in *Beli Ram's case* (supra) is not attracted. Under the situation, the election petition has to be determined on the basis of the particulars as given in the election petition.

It is desirable to refer to certain relevant decisions applicable to the facts of the case. Their Lordships of the Supreme Court in *Mohan Singh vs. Bhanwari Lal and others*, (AIR 1964 SC 1366)

observed as under:

".....There is no express averment in the petition about the acceptance of the offer by Himmat Singh, but it would border upon supererogation to insist that even if offer to help to procure a job amounted to offer of gratification, an allegation that in consequence of this offer Himmat Singh had withdrawn his candidature from the election did not amount to a plea of acceptance of that offer unless it was so expressly averred. However in our view a mere offer of help to secure employment without more is not offer of gratification within the meaning of S,123 (1) (b) of the Act."

Again, the observations of the Supreme Court in Om Prabhas' case (supra) have already been reproduced. In the case of *Ghasi Ram vs. Dal Singh*, (A.I.R. 1968 SC 1191), their Lordships of the Supreme Court in paragraph 13 observed as under:

"In our opinion the law requires that a corrupt practice involving bribery must be fully established. The evidence must show clearly that the promise or gift directly or indirectly was made to an elector to vote or refrain from voting at an election. The position of a Minister is difficult. It is obvious that he cannot ease to function when his election is due. He must of necessary attend to the grievances, otherwise he must fail. He must improve the image of his administration before the public. If everyone of his official acts done *bona fide* is to be construed against him and ulterior motive is spelled out of them, the administration must necessarily come to a standstill."

".....The grant of discretionary grants were part of the general scheme to better community development projects and to remove the immediate grievances of the public. The money was required to be spent in about 3 months' time. The action of the Minister had often the concurrence and recommendation of his subordinate staff. It is for this reason that the orders about the improvement of the supply of water were not passed."

".....The money was not distributed among the outers directly but was given to Panchayats and the public at large....."

In the case of *Harjit Singh vs. Umrao Singh and others* (1980 SC cases 713), the Supreme Court while dealing with the question of distribution of certain grants for the good of voters of a Panchayat observed as under:

".....The allegation in paragraph 11 the election petition was to the effect that the cheque of Rs. 20,000 was delivered at village Bara Pind on May 25, 1977 and the votes were solicited on that date. As regards Littran, the allegation was that a cheque of Rs. 5,000 was delivered on May 27, 1977 and votes were solicited. It is not disputed however that the precise evidence against the respondent was that he made an order for the delivery of Rs. 20,000 on April 17, 1977 in respect of village Bara Pind and on April 29, 1977 in respect of village Littran, in his capacity as the Minister for Revenue. Both these orders were therefore made before the respondent was a candidate at the election in question and it is not disputed before us that he ceased to be a minister on April 30, 1977, when Punjab was brought under the President's rule. So even if it were assumed that the respondent sanctioned the two payments for the purpose of gaining popularity in Bara Pind and Littran Villages, with an eye to his ultimate candidature from Nakodar Assembly constituency, it cannot be said that his action amounted to a gift, offer or promise by him as a "candidate" at the election in question so as to amount to the corrupt practice of bribery under clause (1) of section 123 of the Act. As regards the alleged distribution of cheques on May 25 and May 27, 1977, it will be enough to say that even if it were presumed that the respondent was allowed to do so after he ceased to be a Minister, the mere delivery of cheques could not possibly amount to bribery when, as has been stated, there was no element of bargain in regard to it."

In the case of *Bhanu Kumar Shastri vs. Mohanlal Sukhadia and others* (AIR 1971 SC 2025), the Supreme Court in paragraph 58 of the Judgment observed as under:

“Under section 123(1) of the Representation of the People Act, bribery is said to be a gift, offer or promise by a candidate of any gratification to any person with the object directly or indirectly of including an elector to vote at an election. The ingredients of bribery are, therefore, first gift or offer or promise of gratification to an elector, second, the gift or offer or promise of gratification is for the direct or indirect purpose of inducing an elector to vote. It was said on behalf of the respondent that if Ministers on the eve of the election render public or social service by redressing grievances of the public in relation to construction of roads or installation of water taps or closing of insanitary drains or pits, these acts should not be interpreted to be either gift or offer or promise of gratification. It is difficult to lay down an abstract proposition. Ordinarily amelioration of grievances of the public appears to be innocuous. If, however, there is evidence to indicate that any candidate at an election abuses his power and position as a Minister in the Government by utilising public revenues for conferring advantage or benefit on a particular group of people for the purpose of obtaining their votes, different consideration will arise.....”

In the case of *Raj Narain* (Supra), their Lordships of the Supreme Court while referring decision in *Hardwari Lal vs. Kanwal Singh* (AIR 1972 SC 515) observed as under:

“..... From these decisions, it follows that facts stated in the petition relating to any corrupt practice must be sufficient to constitute a cause of action. In other words the facts must bring out all the ingredients of the corrupt practice alleged. If the facts stated fail to satisfy that requirement then they do not give rise to a triable issue. Such a defect cannot be cured by any amendment after the period of limitation for filing the election petition. But even if all the material facts are stated in the election petition, for a proper trial better particulars may still be required. If those particulars are not set out in the election petition, they may be incorporated into the election petition with the permission of the Court even after the period of limitation.....”

In the case of *Randhir Singh vs. Ravi Inder Singh* (AIR 1981 Punjab and Haryana 45) in paragraph 13 of the judgment, it has been observed:

“I have perused the original election petitions of both the above cited cases and I find that allegations of bargain with the voters for getting their votes can be easily construed therefrom, but in the case in hand this essential ingredient is manifestly lacking. In the absence of this material fact the charge of bribery against the respondent must collapse. In *Udhav Singh's* case (AIR 1876 SC 744) (Supra) their Lordships have further laid down that failure to plead a single material fact leads to incomplete cause of action and in complete allegations of a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure.”

In the light of the above discussion and the decisions referred to above. I now switchover to the impact of the decisions on the facts and particulars as stated in the election petition. Before I elaborate this point, it may be pointed out that the learned counsel for the respondent has not pressed preliminary issues No. 2, 3 and 5. As such, these issues are decided against the respondent. The only preliminary issues which now survive for decision are issues No. 1 and 4 as reproduced earlier above. Both these issues are inter-connected and can be conveniently disposed of together.

It cannot be disputed that in case an allegation of corrupt practice of bribery is made, it is necessary that material facts and full particulars should be mentioned in an election petition so as

to a constitute a cause of action. The necessity of giving material facts and full particulars is emphasised so that the opposite party can have a proper opportunity to meet the same. A perusal of the allegations of the above corrupt practices shows that the same are vague and substantially lack in material particulars inasmuch as the names of the persons concerned, the relevant dates and full particulars of the acts complained of are not given. Even the names of the persons to whom offer of bribery was made are also given. An essential ingredient to constitute the corrupt practices of bribery is also lacking inasmuch as it is not asserted whether the offer had been accepted or not. It may be pointed out that in sub-para(ii) of 4(a) at the bottom, it has been averred that "It may be submitted that the aforesaid grants were mostly made through the Block Development Officer to the various Panchayats on their asking and behest as a reward and a promise to vote for the respondent". In this sentence, no doubt it is stated that grants were mostly made on their asking and behest as a reward and promise to vote for the respondent, but the necessary particulars regarding the persons who promised to vote have not been given. It may be pointed that it is not enough to reproduce the words of the provisions of the Act but it is necessary that full particulars thereof be given.

In the election petition, allegations have been also made against the respondent regarding the misuse of his powers as a Minister and misutilising the services of certain officials for the enhancement of the election prospects. The allegations also do not give material facts and full particulars of the alleged acts. The relevant decisions which have been referred to earlier above show that even during the election a Minister has to discharge certain duties and delegations. A Minister in the discharge of his duties may be required to do some acts administration including granting of money for the uplift of certain communities and this action of the Minister is not to be construed against him unless it can be established that there was a bargain with the voters for getting their assistance at the election. The facts as given in respect of this allegation substantially lack in material particulars.

The upshot of the above discussion is that testing the facts and particulars as contained in the petition, on the touch-stone of the relevant observations in the above decisions, it cannot be said that material facts and especially full particulars of the aforesaid corrupt practices are given in the election petition. In order to establish an alleged corrupt practice, the law requires the same standard of proof and particulars as in a criminal case.

For the foregoing reasons, the aforesaid preliminary issues are decided against the petitioner and the election petition is dismissed. However, under the circumstances, the parties are left to bear their own costs.

December 9, 1983.

Sd/-
H. S. THAKUR,
A.C.J.

By order,
O. N. NAGAR,
Under Secretary,
Election Commission of India.

